

Q&A on Temporary Layoffs

Questions & Answers

Updated 6/18/2010

General Questions

1. Does ESSB 6503 impact all state employees?

No, specific activities of agencies and higher education institutions are exempted from compensation reductions. Agencies and institutions must identify which positions will be excluded based on performing those activities or being engaged in that work.

2. What is the notice period for a temporary layoff?

For non-represented employees, seven calendar days notice must be given. For represented employees, the required notice period is between five and seven calendar days notice depending upon the applicable collective bargaining agreement.

3. What is my status during a temporary layoff?

A temporary layoff is not a break in service. You will be placed on leave without pay for any day you are subject to temporary layoff.

4. If an employee must take 10 days off without pay spread out over the next 12 months due to temporary layoff, is the employee eligible for unemployment benefits for the temporary layoff days?

Unemployment benefits are determined on a weekly basis. As a general rule, people who normally work full-time but whose work hours are reduced by one work day in a week will not be eligible for benefits because they still earn too much in that week to be considered "unemployed" for the week.

However, eligibility is determined on a case-by-case basis. Anyone has a right to file an application for benefits and claim weekly benefits. When Employment Security Department staff have all the facts, they will determine eligibility.

5. Can an employee delay or decline their increment increase?

No.

Work Schedules

6. What will be the impact of the temporary layoff for employees with flexible work schedules, e.g. four 10 hour shifts in a week or part-time employees?

On the day of temporary layoff, employees will be placed on leave without pay. The temporary layoff is for the shift an employee is scheduled the day of the temporary layoff.

7. Can an agency change work schedules so all full-time employees subject to a temporary layoff have the same loss in paid hours?

Yes, for non-represented employees employers can make temporary changes in work hours or shift for a period of thirty calendar days or less by providing two calendar days notice to the employee. The day notification is given constitutes a day of notice. The notice of a changed work schedule could be included in the layoff notice. For represented employees, this is a matter that must be discussed with the unions.

8. What happens if the day of the temporary layoff is a regularly scheduled day off for an employee?

The agency must designate an alternative day during the month on which the employee is scheduled to work as the temporary layoff day. The employee will be placed on leave without pay on that day.

Leave Issues

9. Can employees use leave during a temporary layoff?

The bill allows employees with a monthly full-time equivalent base salary of two thousand five hundred dollars or less to use accrued vacation leave or donated shared leave in lieu of temporary layoff. Any premiums such as assignment pay or shift premium are not included in determining whether the employee's salary is two thousand five hundred dollars or less.

10. Can an employee use vacation leave during a temporary layoff if they have been employed for less than six months?

Yes, eligible employees who have less than six months of continuous state employment can use accrued vacation leave during a temporary layoff if the employee's full-time equivalent base salary is two thousand five hundred dollars or less.

11. Is the two thousand five hundred dollars calculated with or without the temporary layoff days included?

The monthly full-time equivalent base salary is determined based on what base salary would be earned if the employee worked full-time, regardless of leave without pay taken or time not worked.

12. What happens if an employee receives an increment increase which causes their salary to be in excess two thousand five hundred dollars?

The employee is no longer eligible to use accrued vacation leave or shared leave and will be placed on leave without pay during the temporary layoff.

13. What is the impact of a temporary layoff day for when an employee is on military leave per WAC 357-31-360 and RCW 38.40.060?

Employees on military leave for required military duty, training, or drills should not be charged with a day of military leave for an otherwise non-working day. The statute authorizing military leave for public employees was amended in 2010 to specifically provide that the employee would *only* be charged military leave for days that he or she is scheduled to work. Therefore, an employee who has been temporarily laid off should not have that day charged against their 21 day military leave entitlement.

Employers will need to notify the employee of the temporary layoff. For non-represented employees, seven calendar days notice must be given. For represented employees, the required notice period is between five and seven calendar days notice depending upon the applicable collective bargaining agreement. For non-represented employees, if the employer chooses to use United States mail as the method of delivery, service of the notice is regarded as complete upon deposit in the mail, properly stamped and addressed. Employers should mail the temporary layoff notice to the last address on file for the employee.

14. How does the temporary layoff affect an employee in Family Medical Leave Act (FMLA) status?

The employee must receive notice of the temporary layoff. If the employee was approved to use sick leave the day of the temporary layoff, the employer should notify the employee that the approval of sick leave is being rescinded. The appropriate absence type (9397 LWOP Temp Layoff) must be entered for the employee.

If the employee was approved to use vacation leave or shared leave and has a monthly full-time equivalent base salary which exceeds \$2500, the approval of vacation leave must be rescinded and appropriate absence type (9397 LWOP Temp Layoff) must be entered for the employee. If the employee's monthly full-time equivalent base salary is \$2500 or less, the employee can remain on vacation leave or shared leave but the appropriate absence type must be entered (9398 Vac Lv Temp Layoff or 9399 Shared Lv Temp Layoff, respectively).